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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
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12 FORD MOTOR CREDIT COMPANY LLC, a
Delaware Limited Liability Company,

13 Plaintiff,

14 vs.

15 MARCO VENTURES, INC., a California
16 Corporation, dba FORD OF MARIN,

17 Defendant.
18

Case No.: CV08-4906-MMC

~~[PROPOSED] ORDER FOR WRIT OF~~
~~POSSESSION-~~
GRANTING PLAINTIFF'S
APPLICATION FOR WRIT OF
POSSESSION AND FOR
INJUNCTIVE RELIEF

Judge: Hon. Maxine M. Chesney
Complaint Date: October 27, 2008

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20 The Application of Ford Motor Credit Company LLC ("Ford Credit"), a Delaware limited
21 liability company, for the issuance of an order for writ of possession and for injunctive relief came
22 on before the Honorable Maxine M. Chesney, United States District Court Judge for the Northern
23 District of California.

24 The Court, having reviewed the application of Ford Credit for writ of possession and
25 injunctive relief, the supporting declarations and memorandum of points and authorities and the
26 complaint on file in this action, and any opposition filed to the application, finds that Ford Credit
27 has established that it is entitled to the issuance of a Writ of Possession and has established the
28 probable validity that there is an immediate danger that the vehicles identified on the attached

1 **Exhibit A**, the other personal property described in the attached **Exhibit B** and the proceeds from
2 the sale of any such vehicle or other personal property (collectively the “Collateral”), may become
3 unavailable to levy and may become substantially impaired in value, and

4 GOOD CAUSE APPEARING, THEREFORE,

5 IT IS HEREBY ORDERED that:

6 1. Defendant Marco Ventures, Inc., dba Ford of Marin (“Ford of Marin”) has received
7 timely and proper notice of this hearing on Plaintiff Ford Credit’s Application for Writ of
8 Possession and Injunctive Relief under the Court’s Local Rules.

9 2. Ford Credit has established the probable validity of its security interest in, and claim
10 to possession of, the vehicles identified on the attached **Exhibit A** and all of Ford of Marin’s
11 furniture, fixtures, machinery, supplies and other equipment, all motor vehicles, tractors, trailers,
12 implements, service parts and accessories and other inventory of every kind, all accounts, contract
13 rights, chattel paper and general intangibles as described in the attached **Exhibit B**, that Defendant
14 Ford of Marin is in default on its loan obligations owing to Ford Credit as set forth in the moving
15 papers and that Ford of Marin has not been open for business since October 10, 2008.

16 3. Ford Credit has established that the Collateral is located at Ford of Marin’s place of
17 business at 619 E. Francisco Boulevard, San Rafael, California 94901 (the “Dealership”).

18 4. The Clerk of this Court shall issue a writ of possession as provided in California
19 Code of Civil Procedure section 512.010, made applicable by Federal Rule of Civil Procedure 64,
20 upon Ford Credit’s submission to the Clerk of a proposed writ of possession.

21 5. The levying officer may enter the following private places at any time or times, using
22 any necessary reasonable force, whether the premises are occupied or unoccupied, to take
23 possession of the Collateral or some part thereof: 619 E. Francisco Boulevard, San Rafael,
24 California 94901.

25 6. The levying officer within whose jurisdiction the Collateral, or some part thereof, is
26 located, is authorized to execute the Writ of Possession and levy on the Collateral in either of the
27 following manners as directed by Ford Credit:
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1 a. The levying officer may seize the Collateral and retain custody of it
2 in the manner provided by California Code of Civil Procedure
3 sections 514.010 - 514.050; or

4 b. The levying officer within whose jurisdiction the Collateral, or some
5 part thereof, is located may maintain the peace while Ford Credit, its
6 agents and employees take and maintain possession of the Collateral
7 in the manner provided by California Code of Civil Procedure
8 sections 514.010 - 514.050.

9 7. Upon delivery of the Collateral to Ford Credit, the United States Marshal Service
10 shall be held harmless as to the transport, storage, and maintenance of the Collateral.

11 8. Ford Credit is to store the Collateral in a reasonable manner and either Ford Credit or
12 the storage facility shall carry sufficient insurance to protect the Collateral from loss prior to its sale
13 or disposition. Ford Credit shall dispose of the Collateral in the manner provided under the
14 California Uniform Commercial Code.

15 9. Ford Credit has established that it has a security interest in all accounts of Ford of
16 Marin. Ford Credit is authorized under this Order and the Writ of Possession to take possession of
17 all Collateral in the deposit accounts of Ford of Marin wherever located. Ford Credit is authorized
18 to have the United States Marshal serve a financial institution levy upon any financial institution
19 with possession of Collateral for turnover of the Collateral in the Accounts to Ford Credit through
20 the United States Marshal in the manner provided under California Code of Civil Procedure section
21 704.080. ^{not} Neither Ford of Marin shall issue checks, drafts or other form of withdrawals from the
22 Accounts from the date of the issuance of this Order except to make payment to Ford Credit.

23 10. Ford of Marin shall deliver and turn over the Collateral to Ford Credit as provided by
24 California Code of Civil Procedure section 512.070. Ford Credit will then hold the Collateral for
25 not less than 10 days in order to allow Ford of Marin an opportunity to obtain redelivery of the
26 Collateral pursuant to Cal. Code of Civ. Proc. §514.030.

27 11. Ford Credit is authorized to use a single USM-285 form which will refer to a list
28 including all motor vehicles comprising the Collateral and identifying each motor vehicle

1 specifically by make, model, year, and vehicle identification number. The levying officer is directed
2 to accept such form in full compliance with its procedures requiring the use of form USM-285.

3 12. The writ of possession shall issue forthwith. The Court waives any filing or posting
4 of an undertaking or bond by Ford Credit as the Court is permitted and authorized to do under
5 California Code of Civil Procedure section 515.010(b). The Court finds, for the purposes of this
6 Order, that the value of Ford of Marin's assets is approximately \$2,379,219.47 which is less than the
7 principal amounts of the contractual obligations totaling \$2,870,856.09 it owes to Ford Credit by
8 \$491,636.62. Under California Code of Civil Procedure §515.010(b), Ford Credit is not required to
9 file an undertaking.

10 13. The written undertaking required by Ford of Marin for redelivery or to stay delivery
11 shall be in the amount of \$2,870,856.09.

12 14. The Clerk of this Court shall attach a copy of this Order to the writ of possession.

13 15. Ford Credit's representatives shall, if the levying officer so requests, accompany the
14 levying officer to the business premises described above, to review and examine Ford of Marin's
15 books and records relating to the vehicles and parts constituting the Collateral in order to determine
16 the status, location and time and date of return of any Collateral. Ford Credit's representative is
17 authorized to remain at the Ford of Marin Dealership at all times until all the Collateral is removed
18 from the Dealership and until it has completed its inspection of Ford of Marin's books and records.

19 16. The levying officer is authorized to remain on Ford of Marin's business premises at
20 all times until all the Collateral is removed from the Dealership.

21 17. Brasher's Sacramento Auto Auction, and/or its authorized agents and assigns, is
22 authorized to act as substitute custodian ("Substitute Custodian") of any and all items of personal
23 property that is located and seized within the State of California pursuant to this Order, and as
24 Substitute Custodian it shall hold harmless the United States Marshal Service from liability arising
25 from any acts, incidents, or occurrences in connection with the seizure and possession of the
26 personal property located at the Collateral arising in the ordinary, authorized scope of the duties of
27 the United States Marshal (which acts do not include acts arising from negligent or intentional
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1 tortious conduct), including any third-party claims, and the United States Marshal shall be
2 discharged of his or her duties and responsibilities for safekeeping of the seized goods. Brasher's
3 Sacramento Auto Auction is located at 6233 Blacktop Road, Rio Linda, CA 95673, (telephone:
4 (916) 991-5555). The United States Marshal shall request proof of insurance from the Substitute
5 Custodian before surrendering the Collateral to the Substitute Custodian.

6 18. The United States Marshal while accomplishing such seizure shall employ whatever
7 reasonable force that is necessary to break open and enter the Subject Property, regardless of
8 whether said premises and/or location is locked or unlocked or occupied or unoccupied, and to
9 inspect the contents of any parking lot, garage, room, vehicle, container or desk or document.

10 IT IS FURTHER ORDERED THAT:

11 19. Ford of Marin, its agents, employees, and all persons acting for it or on its behalf, are
12 hereby immediately restrained and enjoined from transferring any interest in the Collateral by lease,
13 sale, pledge, gift, or grant of security interest or otherwise disposing of, encumbering, secreting or
14 transferring possession of the Collateral, in any manner which would prevent, hinder, or delay the
15 levying officer from taking possession of the Collateral.

16 20. Defendant Ford of Marin, its agents, employees and anyone acting on its behalf, are
17 enjoined and restrained from transferring any interest by sale, pledge, gift or grant of security
18 interest or otherwise disposing of, or encumbering the Collateral identified on the attached **Exhibits**
19 **A and B.**

20 21. In the event that Ford of Marin ceases to conduct business, Ford Credit is authorized
21 to have all mail to be delivered to Ford of Marin redirected to a post office box that Ford Credit will
22 maintain for the purpose of receiving Ford of Marin's mail. Ford Credit will be authorized to open
23 the mail to Ford of Marin and to take possession of all money paid to Ford of Marin and to endorse
24 all checks, money orders, and other forms of payment to Ford Credit and to apply the funds to the
25 contract balances owing by Ford of Marin to Ford Credit. Ford of Marin, its officers, or its
26 appointed employees are agents are permitted to be present when Ford Credit opens any such
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1 redirected mail. The parties shall cooperate in scheduling a reasonable time for the opening of the
2 redirected mail.

3 22. Ford Credit may immediately place a security guard(s) on the Dealership premises
4 who shall be authorized to remain at the Ford of Marin Dealership at all times until all the Collateral
5 is removed from the Dealership and may utilize the assistance of law enforcement agencies in order
6 to deter the removal of any Collateral from the Dealership premises.

7 23. This order shall issue November 19, 2008, at 12 p.m.

8 24. This Order shall remain in effect until modified by further order of this Court, or else
9 is modified by written agreement signed by Plaintiff Ford Credit and Defendant Ford of Marin filed
10 with and approved by order of this Court.

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12 DATED: November 19, 2008

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14 Hon. Maxine M. Chesney
15 United States District Court Judge
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